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July 2, 2018

Via ECF and E-mail

Honorable Stuart M. Bernstein
U.S. Bankruptcy Court for the Southern District of New York
One Bowling Green
New York, New York 10004
bernstein.chambers@nysb.uscourts.gov

Re: *LaMonica, as Chapter 7 Trustee v. Tilton, et al.*, Adv. Pro. No. 18-01021-smb

Dear Judge Bernstein:

We represent the Plaintiff in the above-referenced adversary proceeding.

At the June 21, 2018 conference, we raised Defendants' failure to respond to Plaintiff's First Set of Requests for the Production of Documents (the "Requests"). The Requests were served on May 16, 2018 and responses were due June 15, 2018, under Rule 34(b)(2)(A). After numerous attempts to resolve the issue, Defendants still have not responded in any way to the Requests and will not commit to a date certain for either answering the Requests or producing documents thereunder, under Rule 34(b)(2)(B).¹

Pursuant to the Court's April 23, 2018 Order [Doc. No. 7], fact discovery ends on October 26, 2018. Plaintiff will be severely prejudiced if he cannot obtain documents from Defendants in short order. Among other things, Plaintiff requires Defendants' document production to take third-party depositions, which he has noticed for August.

Similarly, Plaintiff has noticed party depositions for the week of July 16. Defendants will neither agree to sit on those dates nor propose alternative dates when the depositions can occur.

¹ By failing to respond within the required time period, Defendants have waived any objections to the Requests. *E.g., Carl v. Edwards*, No. 16-cv-3863, 2017 WL 4271443, at *6 (E.D.N.Y. Sep. 25, 2017). Nevertheless, Plaintiff seeks their written responses so that he can see what documents they have to produce.

We do not understand Defendants to have any principled reason for noncompliance. At one point, Defendants suggested that they had no obligation to comply with discovery until they determined that the Rule 26(f) conference had been completed (the parties held their Rule 26(f) conference on April 16, 2018 and reported on the results in open Court at the April 17, 2018 initial pretrial conference). On other occasions, Defendants claimed that they wish to commence discovery, but cannot make any firm commitments without client consent. We will spare the Court the numerous discovery messages back and forth.

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We understand Your Honor's rules require us to seek a discovery conference; however, given the limited nature of this dispute, we respectfully submit a conference is unnecessary. Instead, we respectfully ask that the Court direct Defendants to provide:

- (1) written responses to the Requests;²
- (2) a date certain by which Defendants will substantially complete document production; and
- (3) deposition dates for the parties noticed by Plaintiff.

We propose that Defendants provide these by end of this week. Although it is a holiday week, we have been attempting to resolve this issue for several weeks to no avail and now have less than four months to complete fact discovery. In the event the Court concludes that a conference is desirable, we respectfully request that the Court schedule such conference at the earliest possible date.

Respectfully submitted,

/s/ Avery Samet

cc: Timothy Q. Karcher
Michael T. Mervis

² We understand these responses to be completed, but Defendants will not allow their counsel to release them to us.